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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

KELBAUGH et al.   Atty. Ref.: 723-1081

Serial No. 09/827,332   TC/A.U.: 2191

Filed: April 6, 2001   Examiner: Rampuria, S.

For: PRODUCT TESTING AND BUG TRACKING SYSTEM

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August 28, 2008

Mail Stop Non-Fee Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF

This is in reply to the above-captioned Notice dated August 1, 2008 indicating the

Appeal Brief filed July 16, 2008 is deficient/non-compliant in that "the brief does not

contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn,

objected to, canceled) or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii))."

In particular, the Notice indicates "the status of claims must indicate the status of all

claims (62). Claims 75-85 is stated as pending and the Examiner has rejected them but

they are not on appeal. Arguments must separately argue each ground of rejection to be
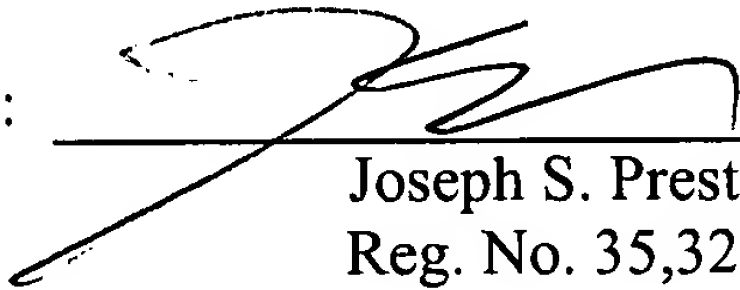
reviewed on appeal under its own heading."

Attached please find revised "Status of Claims" and "Argument" sections of

Applicant's July 16, 2008, Appeal Brief including the status of all claims and properly

identifying the appealed claims.

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This response is timely filed. Please proceed to process the Notice of Appeal filed July 16, 2008 and with the examination of this application.

Respectfully submitted,

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STATUS OF CLAIMS

Claims 1-10, 12-21, 23-31, 33-50, 52-61, 63-71, and 73-85 are pending. Claims 11, 22, 32, 51, and 72 were cancelled. Claims 1-10, 12-21, 23-31, 33-50, 52-61 and 63-71 have been rejected. The rejection of claims 1-10, 12-21, 23-31, 33-50, 52-61, 63-71, and 73-85 is being appealed. No claims have been substantively allowed.

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(VII) ARGUMENT

I. Claims 1-8, 14-16, 18, 20-21, 23-29, 35-37, 39-48, 54-56, 58, 60-69, 75-77, and 80-85 Are Not "Obvious" in view of 35 U.S.C. § 103(a)

Claims 1-8, 14-16, 18, 20-21, 23-29, 35-37, 39-48, 54-56, 58, 60-69, 75-77, and 80-85 stand rejected under 35 U.S.C. § 103(a) as allegedly being "obvious" over Othmer et al. (U.S. Patent No. 6,167,358) in view of Wygodny et al. (U.S. Patent No. 6,282,701).

A. Independent Claim 81 Is Not "Obvious" over Othmer in view of Wygodny.

In order for a claim to be rendered obvious under § 103(a), *inter alia*, each and every limitation of that claim must be taught or suggested in a reference or combination of references. Othmer and Wygodny, alone and in combination, fail to teach or suggest each and every limitation of claim 81. For example, Othmer and Wygodny, alone and in combination, fail to teach or suggest "providing, in response to said user information from the first user, at least a first bug tracking related menu, the contents of which vary based on the first user's role in the software development process; . . . and providing, in response to said user identification information from the second user, at least a second bug tracking related menu, different from the first bug tracking menu, the contents of which vary based on the second user's role in the software development process," as required by claim 81 and its dependents. Thus, Othmer and Wygodny, alone and in combination, fail to render obvious claim 81 and its dependents.

On page 16 of the Final Office Action, the Examiner admits that Othmer does not disclose "a second bug tracking related menu specifically tailored to the second user's

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role in the software development process, wherein the first and second bug tracking

menus are different from each other." The Final Office Action introduces Wygodny to

make up for this deficiency with respect to Othmer and, in doing so, alleges that

Wygodny discloses this exact feature in an analogous computer system. However, as

explained in greater detail below, Wygodny clearly does not teach or suggest such a

feature. Thus, the alleged Othmer/Wygodny combination fails to render obvious the

invention of claim 81.

Page 16 of the Final Office Action alleges that this feature is to be found at

column 5, lines 26-30 and Figs. 1A-1C of Wygodny. The entirety of the textual portion

is quoted herein for convenience:

> "In step 1, shown in FIG. 1A, a developer 112 uses a program called
> the BugTrapper analyzer 106 to create a file called a trace control
> information (TCI) file 120. The TCI file 120 contains instructions
> that specify what information is to be collected from a program to be
> traced (the client)."

Clearly, there is nothing in this portion of Wygodny to teach or even remotely suggest

anything at all about menus, much less a bug tracking related menu, much less a bug

tracking related menu whose contents vary based on a user's role in the software

development process.

Similarly, there is absolutely nothing shown visually in Figs. 1A-1C of Wygodny

that shows anything at all about menus, much less a bug tracking related menu, much less

a bug tracking related menu whose contents vary based on a user's role in the software

development process. Fig. 1A shows how a TCI file may be created for a single

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developer, and Fig. 1C shows how a trace log file may be analyzed, again in the context

of a single developer. Fig. 1B does show a TCI file being generated at a user site and,

perhaps not surprisingly, shows a user separate from a developer. To the extent that a

user plays a role in the software development process, however, there is absolutely

nothing in Fig. 1B or its corresponding textual description that teaches or suggests a bug

tracking related menu, much less a bug tracking related menu whose contents vary based

on a user's role in the software development process. Indeed, Wygodny goes out of its

way to make clear that when TCI files are generated in the remote mode, they disclose

secrets about the internal operations of the clients and are thus written using an encoded

format that is not readily decipherable by the user. As stated at column 6, lines 38-41 of

Wygodny, "[f]rom the perspective of the remote user, the agent 104 acts essentially as a

black box that records the execution path of the client 102."

As such, Applicant respectfully submits that the prior art of record, alone and in

combination, fails to teach or suggest at least making decisions based on a user's role,

and varying the contents of a menu, based on a user's role or otherwise. Indeed,

Wydogny, at best, suggests a menu being viewed by a single developer in portions not

even referred to in the rejection made in the Final Office Action. Thus, even assuming,

arguendo, that Wygodny does suggest a first menu, there is no follow-on teaching or

suggestion of a second menu, different from the first menu, and tailored to a second

user's role.

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Pages 2-3 of the Final Office Action respond to this argument and state that "the rejection clearly points out where Othmer and Wygodny teach the claimed features and why it would be obvious to combine their teachings." This seems a bit unfair, however, since pages 2-3 of the Final Office Action cite to new and different portions of Wygodny as allegedly disclosing the above-noted features of claim 81. In any case, Applicant has reviewed Wygodny in its entirety and can find nothing to support the allegation that it teaches "a second bug tracking related menu specifically tailored to the second user's role in the software development process, wherein the first and second bug tracking menus are different from each other."

In maintaining this position, the Final Office Action relies on loose and variable definitions of clients, developers, and users that very clearly conflict with the very explicit and exacting ways that Wygodny uses these terms. As Wygodny makes clear, developers attempt to diagnose problems that have been encountered by users using software programs, called clients. In other words, Wygodny is directed to helping a developer trace the execution of a client software program when a user encounters a problem. Accordingly, a TCI file may be created for and presented to a developer to help the developer solve a problem with the client software program operated by a user. At least in Wygodny, a user has no need to see the TCI file itself, since it is the developer -- and not the user -- who is responsible for diagnosing and fixing a problem with the client software program. It is perhaps not all that surprising, then, that Wygodny does not include any details pertaining to what the user sees or does, since it is the responsibility

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of the <u>developer</u> to attend to problems with the <u>client</u>. Indeed, as Wygodny itself notes, hiding such information from the <u>user</u> actually is advantageous, since it includes "secret" information and helps reduce the chances of a <u>user</u> reverse engineering a <u>client</u>.

Inasmuch as the arguments included on pages 2-3 of the Final Office Action (and essentially reiterated in the Advisory Action) ignore the true teachings and suggestions of Wygodny and erroneously conflate clients, developers, and users, such arguments are fatally flawed. For example, Applicant does not disagree that the analyzer of Wygodny obtains information about a specific <u>client</u> at compile time (see col. 5, lines 25-53, cited in the Final Office Action). Nor does Applicant disagree that a TCI file may be different for different <u>clients</u> (see col. 10, lines 62-67, also cited in the Final Office Action). Nor does Applicant even disagree that a developer can view information corresponding to a TCI which, *arguendo*, could possibly be displayed in a menu, although Applicant does not concede this point (see col. 12, lines 3-21, further cited in the Final Office Action).

However, as column 10, lines 62-67 along with column 12, lines 3-21 make clear, a TCI file is generated based on a specific <u>client</u>, and not a specific <u>user</u>. The same portions of Wygodny indicates that a specific TCI file is accessible by a single <u>developer</u>, and not by a <u>user</u>. Simply stated, in Wygodny, there is a difference between clients, developers, and users. This difference is analogous to the differences between where information is gathered from (a client), who it is gathered for (a developer), and who it ultimately benefits (a user).

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In Wygodny, TCI files are generated, gathered, and displayed for a single developer, and only a single developer. The developer of Wygodny might very well be considered either the first or the second user of claim 1, insofar as both the first user and the second user of claim 81 each play different roles in software development. However, Wygodny never discloses two users that each play different roles in software development. The user in Wygodny cannot be the second claimed user who plays a second role in software development, since the user in Wygodny merely uses the client software and plays no role in its development. Thus, Wygondy cannot teach a second bug tracking related menu specifically tailored to the second developer's role in the software development process, wherein the first and second bug tracking menus are different from each other. Thus, Wygodny cannot make up for the admitted deficiency of Othmer, and the alleged combination of Othmer and Wygodny cannot disclose each and every limitation of claim 81 and its dependents. Accordingly, the alleged Othmer/Wygodny combination fails to render obvious claims 81 and its dependents.

In view of the above, Applicant respectfully requests that the Section 103 rejection of claim 81 and its dependents be reversed.

B. Independent Claim 61 Is Not "Obvious" over Othmer in view of Wygodny.

Similar analysis as that presented above in connection with claim 81 also applies to claim 61 and its dependents. For example, claim 61 recites "a web server for storing a bug tracking system and for permitting an authorized software developer, an authorized software tester, and an authorized project coordinator to access said bug tracking system

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and to communicate with each other via said bug tracking system, and in response to received user identification information, including a password, for <u>providing at least one bug tracking related menu, the contents of which vary based on the user's role as a software developer, software tester or software project coordinator in the software development process</u>." As shown above, the alleged combination of Othmer and Wygodny fail to disclose at least this feature. Thus, the alleged combination of Othmer and Wygodny fails to render obvious the invention of claim 61 and its dependents. Accodringly, Applicant respectfully requests that the Section 103 rejection of claim 81 and its dependents be reversed.

C. Independent Claims 1, 21, and 41 Each Are Not "Obvious" over Othmer in view of Wygodny.

Claim 1 recites, *inter alia*, "providing, in response to said user identification information, at least one bug tracking related menu, the contents of which vary based on the user's role in the software development process." The Final Office Action concedes that Othmer does not teach or suggest "at least one bug tracking related menu tailored to the user's role in the software development process." As previously noted, Wygodny -- which was introduced to make up for this admitted deficiency of Othmer -- only teaches a single user and does not mention either tailoring menus, or tailoring anything else, based on a user role.

The recitation in claim 1 that the menus be tailored and that they be tailored to a role necessarily requires that there be more than one type of menu and role. An alternate

interpretation would completely vitiate this language of claim 1 and render meaningless the notion of tailoring menus based on a user role. As such, substantially the same arguments as those presented above with respect to claim 81 also apply to claim 1. Thus, the alleged combination of Othmer and Wygodny fails to render obvious the invention of claim 1 and its dependents.

Claims 21 and 41 each include similar limitations as those noted above with respect to claim 1 and therefore compel similar interpretations as that presented above with respect to claim 1. Thus, substantially the same reasoning as that presented above also applies to each of claims 21 and 41.

Additionally, claim 21 recites "transmitting at least the edited bug related information via the Internet to a second user having a second role different from the first role in developing said software package." Inasmuch as there is only one user having a role in developing the software package in Wygodny, Wygodny further does not disclose this limitation of claim 21.

In view of the above, Applicant respectfully requests that the Section 103 rejection of claims 1, 21, and 41, and their respective dependents, be reversed.

II. Claims 9-10, 12-13, 30-31, 33-34, 49-50, 52-53, and 70-74 Are Not "Obvious" in view of 35 U.S.C. § 103(a)

Claims 9-10, 12-13, 30-31, 33-34, 49-50, 52-53, and 70-74 stand rejected under 35 U.S.C. § 103(a) as allegedly being "obvious" over Othmer and Wygodny in view of Johndrew et al. (U.S. Patent Publication No. 2001/0049697).

The introduction of Johndrew et al. fails to make up for the above-described deficiencies with respect to the Othmer/Wygodny combination. Thus, Applicant respectfully requests that this rejection be reversed.

III.   Claims 17, 38, 57, and 78 Are Not "Obvious" in view of 35 U.S.C. § 103(a)

Claims 17, 38, 57, and 78 stand rejected under 35 U.S.C. § 103(a) as allegedly being "obvious" over Othmer and Wygodny in view of Admitted Prior Art.

The introduction of the Admitted Prior Art fails to make up for the above-described deficiencies with respect to the Othmer/Wygodny combination. Thus, Applicant respectfully requests that this rejection be reversed.

IV.   Claims 19, 40, 59, and 79 Are Not "Obvious" in view of 35 U.S.C. § 103(a)

Claims 19, 40, 59, and 79 stand rejected under 35 U.S.C. § 103(a) as allegedly being "obvious" over Othmer and Wygodny in view of Tse (U.S. Patent No. 5,742,754).

The introduction of Tse fails to make up for the above-described deficiencies with respect to the Othmer/Wygodny combination. Thus, Applicant respectfully requests that this rejection be reversed.

CONCLUSION

In conclusion it is believed that the application is in clear condition for allowance; therefore, early reversal of the Final Rejection and passage of the subject application to issue are earnestly solicited.

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